

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **76-3-207**, as last amended by Chapter 11, Laws of Utah 2003

36 **76-5-202**, as last amended by Chapter 191, Laws of Utah 2006

37 **77-32-601**, as last amended by Chapter 256, Laws of Utah 2002

38 **78-46-5**, as last amended by Chapter 209, Laws of Utah 2001

39 ENACTS:

40 **76-3-207.7**, Utah Code Annotated 1953



42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **76-3-207** is amended to read:

44 **76-3-207. Capital felony -- Sentencing proceeding.**

45 (1) (a) When a defendant has pled guilty to or been found guilty of a capital felony,
46 there shall be further proceedings before the court or jury on the issue of sentence.

47 (b) In the case of a plea of guilty to a capital felony, the sentencing proceedings shall
48 be conducted before a jury or, upon request of the defendant and with the approval of the court
49 and the consent of the prosecution, by the court which accepted the plea.

50 (c) (i) When a defendant has been found guilty of a capital felony, the proceedings
51 shall be conducted before the court or jury which found the defendant guilty, provided the
52 defendant may waive hearing before the jury with the approval of the court and the consent of
53 the prosecution, in which event the hearing shall be before the court.

54 (ii) If circumstances make it impossible or impractical to reconvene the same jury for
55 the sentencing proceedings, the court may dismiss that jury and convene a new jury for the
56 proceedings.

57 (d) If a retrial of the sentencing proceedings is necessary as a consequence of a remand

58 from an appellate court, the sentencing authority shall be determined as provided in Subsection
59 (6).

60 (2) (a) In capital sentencing proceedings, evidence may be presented on:

61 (i) the nature and circumstances of the crime;

62 (ii) the defendant's character, background, history, and mental and physical condition;

63 (iii) the victim and the impact of the crime on the victim's family and community

64 without comparison to other persons or victims; and

65 (iv) any other facts in aggravation or mitigation of the penalty that the court considers
66 relevant to the sentence.

67 (b) Any evidence the court considers to have probative force may be received
68 regardless of its admissibility under the exclusionary rules of evidence. The state's attorney and
69 the defendant shall be permitted to present argument for or against the sentence of death.

70 (3) Aggravating circumstances include those outlined in Section 76-5-202.

71 (4) Mitigating circumstances include:

72 (a) the defendant has no significant history of prior criminal activity;

73 (b) the homicide was committed while the defendant was under the influence of mental
74 or emotional disturbance;

75 (c) the defendant acted under duress or under the domination of another person;

76 (d) at the time of the homicide, the capacity of the defendant to appreciate the
77 wrongfulness of his conduct or to conform his conduct to the requirement of law was impaired
78 as a result of a mental condition, intoxication, or influence of drugs, except that "mental
79 condition" under this Subsection (4)(d) does not mean an abnormality manifested primarily by
80 repeated criminal conduct;

81 (e) the youth of the defendant at the time of the crime;

82 (f) the defendant was an accomplice in the homicide committed by another person and
83 the defendant's participation was relatively minor; and

84 (g) any other fact in mitigation of the penalty.

85 (5) (a) The court or jury, as the case may be, shall retire to consider the penalty. Except

86 as provided in Subsection 76-3-207.5(2), in all proceedings before a jury, under this section, it
87 shall be instructed as to the punishment to be imposed upon a unanimous decision for death
88 and that the penalty of either an indeterminate prison term of not less than 20 years and which
89 may be for life or life in prison without parole, shall be imposed if a unanimous decision for
90 death is not found.

91 (b) The death penalty shall only be imposed if, after considering the totality of the
92 aggravating and mitigating circumstances, the jury is persuaded beyond a reasonable doubt that
93 total aggravation outweighs total mitigation, and is further persuaded, beyond a reasonable
94 doubt, that the imposition of the death penalty is justified and appropriate in the circumstances.
95 If the jury reports unanimous agreement to impose the sentence of death, the court shall
96 discharge the jury and shall impose the sentence of death.

97 (c) If the jury is unable to reach a unanimous decision imposing the sentence of death
98 [~~or the state is not seeking the death penalty~~], the jury shall then determine whether the penalty
99 of life in prison without parole shall be imposed, except as provided in Subsection
100 76-3-207.5(2). The penalty of life in prison without parole shall only be imposed if the jury
101 determines that the sentence of life in prison without parole is appropriate. If the jury reports
102 agreement by ten jurors or more to impose the sentence of life in prison without parole, the
103 court shall discharge the jury and shall impose the sentence of life in prison without parole. If
104 ten jurors or more do not agree upon a sentence of life in prison without parole, the court shall
105 discharge the jury and impose an indeterminate prison term of not less than 20 years and which
106 may be for life.

107 (d) If the defendant waives hearing before the jury as to sentencing, with the approval
108 of the court and the consent of the prosecution, the court shall determine the appropriate
109 penalty according to the standards of Subsections (5)(b) and (c).

110 (e) If the defendant is sentenced to more than one term of life in prison with or without
111 the possibility of parole, or in addition to a sentence of life in prison with or without the
112 possibility of parole the defendant is sentenced for other offenses which result in terms of
113 imprisonment, the judge shall determine whether the terms of imprisonment shall be imposed

114 as concurrent or consecutive sentences in accordance with Section 76-3-401.

115 (6) Upon any appeal by the defendant where the sentence is of death, the appellate
 116 court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence
 117 of death and remand the case to the trial court for new sentencing proceedings to the extent
 118 necessary to correct the error or errors. An error in the sentencing proceedings may not result
 119 in the reversal of the conviction of a capital felony. In cases of remand for new sentencing
 120 proceedings, all exhibits and a transcript of all testimony and other evidence properly admitted
 121 in the prior trial and sentencing proceedings are admissible in the new sentencing proceedings,
 122 and if the sentencing proceeding was before a:

123 (a) jury, a new jury shall be impaneled for the new sentencing proceeding unless the
 124 defendant waives the hearing before the jury with the approval of the court and the consent of
 125 the prosecution, in which case the proceeding shall be held according to Subsection (6)(b) or
 126 (c), as applicable;

127 (b) judge, the original trial judge shall conduct the new sentencing proceeding; or

128 (c) judge, and the original trial judge is unable or unavailable to conduct a new
 129 sentencing proceeding, then another judge shall be designated to conduct the new sentencing
 130 proceeding, and the new proceeding will be before a jury unless the defendant waives the
 131 hearing before the jury with the approval of the court and the consent of the prosecution.

132 (7) ~~[In the event the death]~~ If the penalty of death is held to be unconstitutional by the
 133 Utah Supreme Court or the United States Supreme Court, the court having jurisdiction over a
 134 person previously sentenced to death for a capital felony shall cause the person to be brought
 135 before the court, and the court shall sentence the person to ~~to~~ life in prison without parole.

136 ~~[(a) an indeterminate prison term of not less than 20 years and which may be for life, if
 137 the death penalty is held unconstitutional prior to April 27, 1992; or]~~

138 ~~[(b) life in prison without parole if the death penalty is held unconstitutional on or after
 139 April 27, 1992, and any person who is thereafter convicted of a capital felony shall be
 140 sentenced to an indeterminate prison term of not less than 20 years and which may be for life or
 141 life in prison without parole.]~~

142 (8) (a) If the appellate court's final decision regarding any appeal of a sentence of death
143 precludes the imposition of the death penalty due to mental retardation or subaverage general
144 intellectual functioning under Section 77-15a-101, the court having jurisdiction over a
145 defendant previously sentenced to death for a capital felony shall cause the defendant to be
146 brought before the sentencing court, and the court shall sentence the defendant to life in prison
147 without parole.

148 (b) If the appellate court precludes the imposition of the death penalty under
149 Subsection (8)(a), but the appellate court finds that sentencing the defendant to life in prison
150 without parole is likely to result in a manifest injustice, it may remand the case to the
151 sentencing court for further sentencing proceedings to determine if the defendant should serve
152 a sentence of life in prison without parole or an indeterminate prison term of not less than 20
153 years and which may be for life.

154 Section 2. Section **76-3-207.7** is enacted to read:

155 **76-3-207.7. First degree felony aggravated murder -- Noncapital felony --**
156 **Penalties -- Sentenced by court.**

157 (1) A person who has pled guilty to or been convicted of first degree felony aggravated
158 murder under Section 76-5-202 shall be sentenced by the court.

159 (2) The sentence under this section shall be life in prison without parole or an
160 indeterminate prison term of not less than 20 years and which may be for life.

161 Section 3. Section **76-5-202** is amended to read:

162 **76-5-202. Aggravated murder.**

163 (1) Criminal homicide constitutes aggravated murder if the actor intentionally or
164 knowingly causes the death of another under any of the following circumstances:

165 (a) the homicide was committed by a person who is confined in a jail or other
166 correctional institution;

167 (b) the homicide was committed incident to one act, scheme, course of conduct, or
168 criminal episode during which two or more persons were killed, or during which the actor
169 attempted to kill one or more persons in addition to the victim who was killed;

170 (c) the actor knowingly created a great risk of death to a person other than the victim
171 and the actor;

172 (d) the homicide was committed incident to an act, scheme, course of conduct, or
173 criminal episode during which the actor committed or attempted to commit aggravated robbery,
174 robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon
175 a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child
176 abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson,
177 arson, aggravated burglary, burglary, aggravated kidnapping, kidnapping, or child kidnapping;

178 (e) the homicide was committed incident to one act, scheme, course of conduct, or
179 criminal episode during which the actor committed the crime of abuse or desecration of a dead
180 human body as defined in Subsection 76-9-704(2)(e);

181 (f) the homicide was committed for the purpose of avoiding or preventing an arrest of
182 the defendant or another by a peace officer acting under color of legal authority or for the
183 purpose of effecting the defendant's or another's escape from lawful custody;

184 (g) the homicide was committed for pecuniary or other personal gain;

185 (h) the defendant committed, or engaged or employed another person to commit the
186 homicide pursuant to an agreement or contract for remuneration or the promise of remuneration
187 for commission of the homicide;

188 (i) the actor previously committed or was convicted of:

189 (i) aggravated murder, Section 76-5-202;

190 (ii) attempted aggravated murder, Section 76-5-202;

191 (iii) murder, Section 76-5-203;

192 (iv) attempted murder, Section 76-5-203; or

193 (v) an offense committed in another jurisdiction which if committed in this state would
194 be a violation of a crime listed in this Subsection (1)(i);

195 (j) the actor was previously convicted of:

196 (i) aggravated assault, Subsection 76-5-103(2);

197 (ii) mayhem, Section 76-5-105;

- 198 (iii) kidnapping, Section 76-5-301;
- 199 (iv) child kidnapping, Section 76-5-301.1;
- 200 (v) aggravated kidnapping, Section 76-5-302;
- 201 (vi) rape, Section 76-5-402;
- 202 (vii) rape of a child, Section 76-5-402.1;
- 203 (viii) object rape, Section 76-5-402.2;
- 204 (ix) object rape of a child, Section 76-5-402.3;
- 205 (x) forcible sodomy, Section 76-5-403;
- 206 (xi) sodomy on a child, Section 76-5-403.1;
- 207 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
- 208 (xiii) aggravated sexual assault, Section 76-5-405;
- 209 (xiv) aggravated arson, Section 76-6-103;
- 210 (xv) aggravated burglary, Section 76-6-203;
- 211 (xvi) aggravated robbery, Section 76-6-302; or
- 212 (xvii) an offense committed in another jurisdiction which if committed in this state
- 213 would be a violation of a crime listed in this Subsection (1)(j);
- 214 (k) the homicide was committed for the purpose of:
- 215 (i) preventing a witness from testifying;
- 216 (ii) preventing a person from providing evidence or participating in any legal
- 217 proceedings or official investigation;
- 218 (iii) retaliating against a person for testifying, providing evidence, or participating in
- 219 any legal proceedings or official investigation; or
- 220 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 221 (l) the victim is or has been a local, state, or federal public official, or a candidate for
- 222 public office, and the homicide is based on, is caused by, or is related to that official position,
- 223 act, capacity, or candidacy;
- 224 (m) the victim is or has been a peace officer, law enforcement officer, executive
- 225 officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror,

226 probation officer, or parole officer, and the victim is either on duty or the homicide is based on,
227 is caused by, or is related to that official position, and the actor knew, or reasonably should
228 have known, that the victim holds or has held that official position;

229 (n) the homicide was committed:

230 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar
231 device which was planted, hidden, or concealed in any place, area, dwelling, building, or
232 structure, or was mailed or delivered; or

233 (ii) by means of any weapon of mass destruction as defined in Section 76-10-401;

234 (o) the homicide was committed during the act of unlawfully assuming control of any
235 aircraft, train, or other public conveyance by use of threats or force with intent to obtain any
236 valuable consideration for the release of the public conveyance or any passenger, crew
237 member, or any other person aboard, or to direct the route or movement of the public
238 conveyance or otherwise exert control over the public conveyance;

239 (p) the homicide was committed by means of the administration of a poison or of any
240 lethal substance or of any substance administered in a lethal amount, dosage, or quantity;

241 (q) the victim was a person held or otherwise detained as a shield, hostage, or for
242 ransom;

243 (r) the homicide was committed in an especially heinous, atrocious, cruel, or
244 exceptionally depraved manner, any of which must be demonstrated by physical torture, serious
245 physical abuse, or serious bodily injury of the victim before death; or

246 (s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or
247 after death, in a manner demonstrating the actor's depravity of mind.

248 (2) ~~[Aggravated]~~ (a) If a notice of intent to seek the death penalty has been filed,
249 aggravated murder is a capital felony.

250 (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder
251 is a noncapital first degree felony punishable by imprisonment for life without parole or by an
252 indeterminate term of not less than 20 years and which may be for life.

253 (c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice

254 of intent to seek the death penalty. The notice shall be served on the defendant or defense
255 counsel and filed with the court.

256 (ii) Notice of intent to seek the death penalty may be served and filed more than 60
257 days after the arraignment upon written stipulation of the parties or upon a finding by the court
258 of good cause.

259 (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to
260 noncapital first degree felony aggravated murder during the period in which the prosecutor may
261 file a notice of intent to seek the death penalty under Subsection (2)(c)(i).

262 (3) (a) It is an affirmative defense to a charge of aggravated murder or attempted
263 aggravated murder that the defendant caused the death of another or attempted to cause the
264 death of another:

265 (i) under the influence of extreme emotional distress for which there is a reasonable
266 explanation or excuse; or

267 (ii) under a reasonable belief that the circumstances provided a legal justification or
268 excuse for his conduct although the conduct was not legally justifiable or excusable under the
269 existing circumstances.

270 (b) Under Subsection (3)(a)(i), emotional distress does not include:

271 (i) a condition resulting from mental illness as defined in Section 76-2-305; or

272 (ii) distress that is substantially caused by the defendant's own conduct.

273 (c) The reasonableness of an explanation or excuse under Subsection (3)(a)(i) or the
274 reasonable belief of the actor under Subsection (3)(a)(ii) shall be determined from the
275 viewpoint of a reasonable person under the then existing circumstances.

276 (d) This affirmative defense reduces charges only as follows:

277 (i) aggravated murder to murder; and

278 (ii) attempted aggravated murder to attempted murder.

279 Section 4. Section **77-32-601** is amended to read:

280 **77-32-601. Establishment of Indigent Aggravated Murder Defense Trust Fund --**
281 **Use of fund -- Compensation for indigent legal defense from fund.**

282 (1) For purposes of this part, "fund" means the Indigent [~~Capital~~] Aggravated Murder
283 Defense Trust Fund.

284 (2) There is established a private-purpose trust fund known as the "Indigent [~~Capital~~]
285 Aggravated Murder Defense Trust Fund" which shall be nonlapsing and shall be disbursed by
286 the Division of Finance at the direction of the board and subject to [~~the provisions of~~] this
287 chapter.

288 (3) The fund consists of:

289 (a) monies received from participating counties as provided in Sections 77-32-602 and
290 77-32-603;

291 (b) appropriations made to the fund by the Legislature as provided in Section
292 77-32-603; and

293 (c) interest and earnings from the investment of fund monies.

294 (4) Fund monies shall be invested by the state treasurer with the earnings and interest
295 accruing to the fund.

296 (5) The fund shall be used to assist participating counties with financial resources, as
297 provided in Subsection (6), to fulfill their constitutional and statutory mandates for the
298 provision of an adequate defense for indigents prosecuted for the violation of state laws in
299 cases involving [~~capital felonies~~] aggravated murder.

300 (6) Monies allocated to or deposited in this fund shall be used only:

301 (a) to reimburse participating counties for expenditures made for an attorney appointed
302 to represent an indigent, other than a state inmate in a state prison, prosecuted for [~~a capital~~
303 felony] aggravated murder in a participating county; and

304 (b) for administrative costs pursuant to Section 77-32-401.

305 Section 5. Section **78-46-5** is amended to read:

306 **78-46-5. Trial by jury.**

307 (1) A trial jury consists of:

308 (a) twelve persons in a capital case;

309 (b) eight persons in a noncapital first degree felony aggravated murder or other

310 criminal case which carries a term of incarceration of more than one year as a possible sentence
311 for the most serious offense charged;

312 (c) six persons in a criminal case which carries a term of incarceration of more than six
313 months but not more than one year as a possible sentence for the most serious offense charged;

314 (d) four persons in a criminal case which carries a term of incarceration of six months
315 or less as a possible sentence for the most serious offense charged; and

316 (e) eight persons in a civil case at law except that the jury shall be four persons in a
317 civil case for damages of less than \$20,000, exclusive of costs, interest, and attorney fees.

318 (2) Except in the trial of a capital felony, the parties may stipulate upon the record to a
319 jury of a lesser number than established by this section.

320 (3) (a) The verdict in a criminal case shall be unanimous.

321 (b) The verdict in a civil case shall be by not less than three-fourths of the jurors.

322 (4) There is no jury in the trial of small claims cases.

323 (5) There is no jury in the adjudication of a minor charged with what would constitute
324 a crime if committed by an adult.